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Macedonia Pilot Courts *Civil Litigation Caseflow Management*

Caseflow Management Operating Standards: Assessment & Recommendations

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Caseflow Management Operating Standards

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I. Introduction

The purpose of this document is to present a practical handbook to guide the pilot court planning and court management committees in the development of a modern caseflow management process in the Macedonia pilot courts.

This first draft of the Caseflow Management Operations Manual builds upon the assessment of the manual case processing system and the closed case survey completed in seven pilot courts in July 2003. The closed case survey involved collection of case type, event and elapsed time data on over 1,500 cases processed by the pilot courts as a means to establish baseline statistical data and measures of the existing workload in the Macedonia courts. While the time to disposition in civil cases was not found to be unusually slow(78% of civil cases disposed within 1 year and a mean time of 223 days), the survey identified significant areas of delay and ineffective performance in the current civil case process. The level of older backlog cases(over 3 year in age) was found to be high (18% of pending cases were older than 3 years from date of filing and the effectiveness of trial scheduling was very problematic, with only 28% of cases scheduled for trial actually being heard on the trial date. These two factors are indicative of a system with inadequate court control over the case management process. Poor trial certainty rates, i.e. the certainty that cases will be heard when scheduled, were caused in large part by three factors:

- Lack of Early Case Management/Intervention: The highest proportion of trial delay was due to problems with “expert*

reports or evidence". The current civil procedure has no case screening, management conference or case management order procedure early in the case life. All "management" is done through scheduling of court hearings. This appears to lead to lack of case preparation and case delay at a later point in the process;

- *Trial Postponements: The number of trial postponements is excessive driven largely by noticing problems and an overly permissive adjournment procedure (still stand procedure) and lack of a uniformly" enforced" trial postponement policy;*
- *Pleadings/Notification Problems: There is presently inadequate control over the initial pleadings process; initial notice of complaint/summons is the responsibility of the court and mail delivery is problematic: process of service and re-service is overly cumbersome; current practice is that answer (responsive)pleadings to complaint are optional which contributes to delay; cases are noticed for pretrial hearings without verification of effective initial service.*

In June 2003, a workshop on fundamental principles of caseflow management was presented to pilot court judges in Prilep during a two day training event. The forty seven (47) pilot court judges and court secretaries in attendance completed an assessment of the current level of application of case management principles in five key areas: Judicial Leadership, Time standards and goals, Communication, Caseflow procedures and Management information to support caseflow in the Macedonia Basic Courts. The results showed a wide range of perceptions, yet revealed clearly that the systems perceived strengths were in the area of judicial leadership and weaknesses were in the area of a lack of clear standards and goals, uneven communication and perceptions of the effectiveness of caseflow procedures. The results are shown below:

Effectiveness of Caseflow Management: An Assessment Tool
(Five Point Scale; 1 = LO; 5=Hi)

	<i>MEDIAN</i>	<i>RANGE</i>	<i>HIGH</i>	<i>LOW</i>
<i>Judicial Leadership</i>	<i>4.5</i>	<i>3.5- 5.0</i>	<i>5.0</i>	<i>3.5</i>
<i>Time Goals & Standards</i>	<i>3.5</i>	<i>2.0-4.5</i>	<i>4.5</i>	<i>2.0</i>
<i>Management Information</i>	<i>4.2</i>	<i>3.5-5.0</i>	<i>5.0</i>	<i>3.5</i>
<i>Communications</i>	<i>3.2</i>	<i>1.0-5.0</i>	<i>5.0</i>	<i>1.0</i>
<i>Caseflow Procedures</i>	<i>3.5</i>	<i>2.5-5.0</i>	<i>5.0</i>	<i>2.5</i>

Further, the assessment of the manual case processing system in the pilot courts reveals that while the procedures are sound in terms of administrative accountability and compliance, there is very limited application of modern caseflow management standards evidenced. The key problem areas in the existing caseflow system in the Macedonia pilot courts are:

- Time standards are non-existent;*
- Accurate case statistics on cases added, cases disposed and pending case inventory and backlog are needed;*
- Court control of the process is not well established;*
- There is very little differentiation in the processing of cases according to case type, complexity, amenability to ADR or level of court intervention required to resolve the dispute;*
- Trial date certainty and court control of continuances is a serious issue that is exacerbated by noticing difficulties;*
- Manual case processing systems, specifically the practices of recording the registers, marking the case files and filing case action documents are duplicative and should be eliminated with the full implementation of the ICIS automated case management system.*

In effect, the current practice in the Macedonia Basic Courts is that all civil cases are processed on a track which anticipates a trial resolution. All cases are assigned on a rotating basis to an individual judge shortly following the filing of the complaint and preparation of case file by the civil intake office. Once assigned to an individual judge, each case is scheduled and managed by that judge. The judge notifies the civil registry office of scheduled dates. Notices, results of summons activity and minutes of court actions are received by civil registry, noted in the civil and commercial registers and placed in the court files. There is very little tracking or monitoring of pending cases performed. President Judges have varying approaches and many do meet with judges to discuss caseflow issues, but on the whole there is a lack of automated or regular case tracking mechanisms. Simple backlog tracking and control systems have been recommended to be put in place in the seven pilot courts. Pending case reports which list all cases pending over 1 year and a list of all pending cases where there is no scheduled event are examples of simple backlog monitoring reports. As of 12/1/03, all seven pilot courts report some level of success in reducing older cases by using these reports in conjunction with planning meetings with the civil judges.

Recommendations for development of model caseflow management procedures in the pilot courts for the future are outlined in the section that follows. It is important to read these recommendations as long term in nature. The process of implementation will certainly need to be gradual, with a series of model caseflow procedures phased in over time.

The objectives of this document are to assist the pilot courts in development of modern caseflow management practices by defining operating standards, procedural guidelines and recommendations on alternative approaches for successful implementation of a strengthened caseflow management system in the pilot courts. It is anticipated that the implementation of these new caseflow management procedures will take time to implement. However, given the commitment demonstrated by the judicial leaders in these pilot courts, the prospects are good for significant progress in this effort.

This Civil Litigation Caseflow Management Manual contains the following components:

Civil Caseflow Management Operating Standards and Procedures with alternative approaches for Implementation in the pilot courts;

Guidelines for development of Model Differentiated Case Management Procedures and Court Rules;

Guidelines for Pilot Court Management Committees - Caseflow Management Improvement Plans.

Section II, Caseflow Management Operating Standards, outline in broad form the key caseflow management operating standards that are recommended for adoption in the Macedonia pilot courts. The Operating Standards provide a blueprint for introduction of modern caseflow management practices in the pilot courts, yet allow for a planned, flexible approach to implementation. Individual Pilot Courts should devise Implementation Plans to identify activities, timetables and responsibilities for implementation of these standards. The Operating Standards should be reviewed and approved by the courts for general application; however, pilot courts should be allowed flexibility in their approach and timetable. One key element in the Operating Standards is the need for adoption of overall case processing time standards and goals for the Macedonia Judiciary. These time standards and goals should be consistent and adopted for all pilot courts. Once adopted and developed by the pilot courts, case processing time standards and goals should be considered for adoption on the national level.

Other operating standards offer a degree of flexibility to allow for individual pilot courts to tailor their approach to local circumstances and resources. Macedonia pilot courts should develop a written Case Management Backlog

and Delay Reduction Plan to describe the activities, timetable and individuals responsible to implement the Operating Standards.

*Section III, **Guidelines for development of Differentiated Case Management procedures in the pilot courts**, provides model procedures which outline guidelines and tentative court rule language for a full implementation of a Differentiated Case Management (DCM) system. The guidelines are based upon model DCM procedures used in the U.S. Federal Civil Justice Reform Act and in N.J. Supreme Court guidelines used for pilot Differentiated Case Management courts. It is not recommended that these guidelines be adopted as written. They are only suggested guidelines and the pilot courts should tailor the guidelines to meet their needs. Development of specific criteria for assignment to case tracks and pretrial procedures for given case tracks should be determined as a matter of policy by the President Judge with input from the trial judges, court staff and the local Bar. It is anticipated that these guidelines would be discussed, revised and adapted to meet the needs and selected approach of the pilot courts.*

*Section IV, **Guidelines for Pilot Court Management Committees**, provides guidelines for development of the pilot courts Backlog and Delay Reduction Plan. It outlines the general steps and elements of a Plan to be used by the pilot court planning committees in planning, implementing and evaluating caseload management improvements. The model plan is presented as a series of check lists and questions regarding the existing workload, goals and specific approaches to implementing the operating standards in the pilot courts. It is intended as a working checklist of steps and decisions needed to guide the pilot court committees in developing Caseload Management improvement plans.*

Section II: Pilot Courts – Caseflow Management Operating Standards

Operating Standard # 1: Establish Clear Case Processing Time Standards and Goals

The Macedonia Supreme Court should establish a national Time to Disposition Standard for Civil cases of twelve (12) months as the goal for all standard civil actions, as measured from the time of case registration to the date of disposition by the first instance court.

In addition, future goals should be established to reach disposition of 90% of all civil actions within twelve (12) months of registration; 98% within twenty-four (24) months; and, 100% within thirty-six (36) months.

Each pilot court should establish time to disposition and backlog reduction goals for their court over a three-year period to allow measurement of progress against the time to disposition standard and the pilot court goals.

Commentary: *One of the key elements of a modern caseflow management system is the presence of time-based standards against which to measure progress. The closed case survey of 2003 indicates that median case processing time for all sampled civil cases disposed in 2002 was 223 days*

(7.3 months), and the 90 percentile was measured at 732 days (24.5 months) from filing to disposition. The aging of pending cases, however, showed that 45% of the pending civil cases in all pilot courts were over 12 months of age, and 18% exceeded 36 months, and could be considered “serious” backlog. The table below compares Macedonia civil case processing times and age of pending cases as compared to recognized standards:

Table I: Case Processing and Backlog in the Macedonia Pilot Courts

	<u>Backlog Standard</u>	<u>Macedonia Courts % Pending¹</u>
<i>Over 12 Months</i>	<i>10%of total</i>	<i>45%</i>
<i>Over 24 months</i>	<i>5%of total</i>	<i>27%</i>
<i>Over 36 months</i>	<i>0%</i>	<i>8%</i>

The establishment of an overall national civil case processing goal of twelve (12) months will allow consistent measurement within and across pilot courts and gauge the progress achieved in expedition and timeliness of case processing in the pilot courts. It is further recommended that the pilot courts establish different disposition standards for classes of cases based upon the nature and complexity of the claim. For example, expedited type cases, such as simple small value money claims, should have a more accelerated time to disposition standard such as 3 to 6 months from date of filing. Standard cases would have the overall time to disposition goal of twelve months. Complex cases, such as Land and Property disputes and other procedurally

¹ All Pending civil cases as of the date of the pending case survey July/August 2003

complex matters should have enlarged time to disposition goals as deemed appropriate.

Pilot courts should also establish annual goals using the following caseflow measures as indicators of progress toward achievement of the overall case processing time standard:

- *Time to case disposition for closed cases (90th percentile of cases disposed within 12 months)*
- *Number and percentage of pending civil cases that exceed the 12 month time standard (backlog percentage)*
- *Projected number of cases added and target for case dispositions for each year.*

Operating Standard #2: Revise civil procedure code to strengthen the courts ability to oversee the notification and initial pleadings process; Implement new civil pretrial protocol to allow dismissal for inactivity and a modern default provision for non responsive cases.

Comment: *Macedonia Judges presently do not have adequate procedural tools to effectively control the expeditious movement of civil cases in the pretrial phase. The burden for initial notice of complaint/summons is the responsibility of the court and mail delivery is problematic. Procedures for process of service should be expanded to allow private service accompanied by sworn affidavit. Use of modern dismissal for inactivity procedures and default for non-responsive cases are needed to reduce wasted costs and time required by excessive court appearances. Specific civil procedural code revisions to be considered are:*

- *Revise civil procedure to streamline notification procedures by requiring the filing party to ensure notification within 90 days of claim; Institute dismissal of complaint without prejudice procedure at 90 days, and dismissal with prejudice at 180 days for failure to provide effective notification;*
- *Revise civil procedure rules to require written answer to complaint within 20 days of notice and summons of complaint for all cases other than those designated as small money claims or dispossession;*
- *Revise requirements for effective service to allow private service of process accompanied by affidavit and expand effective service to include notice by the following: (1) regular and certified mail delivery to last known address, and (2) fixing or attaching notice to last verified address.*
- *Revise civil procedure rules to institute automatic default judgment for defendant failure to answer within 20 days of complaint or failure to appear at scheduled hearing with adequate verification of effective notification;*

Operating Standard #3: Case Screening and Differentiated Case Management Procedures

Each pilot court should establish a process of early case screening and differentiated case management to ensure prompt resolution dependent upon individual factors and needs of civil cases. Criteria should be established to determine assignment to case processing tracks and the President Judge or his designee should screen cases within 10 days of filing of the claim (complaint) in the case. Pretrial procedures should be established based upon case type and complexity for assignment to expedited, standard or complex case processing tracks.

Commentary: *Early screening and assignment to case tracks will assist the courts in better using judicial resources as appropriate to case complexity and needs. Guidelines for development of case screening criteria, procedures and forms are outlined in detail in Section II of this manual. Each pilot court should design case criteria for assignment to tracks. Screening and classification of the case can be accomplished through use of a simple one-page Case Information Statement (CIS) that would be reviewed by the President Judge, after the Court Coordinator or Court Secretary made an initial determination. The Case Information Statement would be required to be attached to all filings of civil complaints and responsive pleadings. Following assignment, the court would notify the parties of their case track assignment, the date of initial hearing or case management conference and the estimated trial date in the case. This process would have a number of significant effects on the current Macedonia pilot court case process: (1) improving early intervention and screening of case needs (2) increase court supervision of the case and improving predictability in court procedures, and (3) involvement of counsel in setting the case track and processing plan improves accountability.*

There are a number of different approaches that pilot courts could take, however, all plans for addressing this standard should include:

- *A procedure for filing of a case information statement early in the life of the case (no later than 30 days from filing of complaint);*
- *Criteria for assignment to expedited, standard and complex case tracks based upon case type, value of the claim, number of parties and estimated trial time;*
- *A listing of case types which are presumptively assigned to case tracks, e.g. Simple money claims to expedited track; property, harm to person and contract cases to standard track; land division cases to complex track;*
- *The method for holding an initial hearing or settlement hearing event in standard and complex cases within 30-60 days of filing;*

- *The prescribed format for a uniform case management order to be used in all complex cases and in standard cases, where deemed appropriate by the managing judge, stipulating deadlines for pretrial examinations, pretrial proceedings and an estimated trial date.*

Operating Standard # 4: Improve involvement, consultation and accountability of the local Bar Association in the court reform effort.

Pilot Courts should involve the local civil attorneys and Bar Association in the case management improvement process.

Commentary: *Case management improvement in the Macedonia Basic Courts will require a formal mechanism for obtaining consultation and commitment from the Macedonia Civil Bar. There are informal means of consultation in place in some pilot courts, however, the local Bar will need to be given a “partnership” role in the effort to reform case management practices if reform is to be effective. The Differentiated Case Management procedures outlined in Section II will require a significant amount of participation by counsel in the process of establishing case track, pretrial processing timelines, assessing amenability of their case to settlement or arbitration, and in developing case management plans. Pilot court management committees should provide representation to one or more attorneys from the local Bar in the committee planning process. The input from the Bar will improve the practical quality of the procedures and improve the sustainability of the project.*

Operating Standard # 5: Establish an Early Intervention Event before a Managing or Settlement Judge in all standard and complex cases.

Each pilot court should develop plans for setting an initial settlement or case management conference event to occur within the first 30 days from the date of filing in all standard and complex cases.

Expedited cases in the pilot courts are generally low value civil money claims that may be able to proceed to trial examination quickly with little pretrial proceedings. These simple two-party cases could proceed quickly to hearing or to mediation without the need to be assigned to an individual judge.

In other case types, however, the movement of cases directly to a trial hearing within the current timeframes is not effective. In standard and complex cases, there is a need to screen and assess the case procedural complexity and needs early on. An early case management meeting with counsel to determine potential for settlement, possibility for alternative means of disposition (mediation or other ADR), and pretrial time deadlines will facilitate case preparation and early resolution.

Operating Standard # 6: Management Information and Monitoring

Increase the Use of Management Information and Reports by Judges and Clerks in regular monitoring of the caseload management process. At a minimum, the pilot court Management Committees should develop and review a monthly calendar performance report that contains:

- *Number of cases filed for the month and year to date;*
- *Number of cases disposed for the month and year to date;*
- *Total number of cases pending at the end of the month;*
- *Total number of cases pending that are over 12 months of age at the end of the month;*
- *The breakdown in cases pending by case type or case track (expedited, standard, complex) at the end of the month;*
- *A backlog exception report, which lists all cases pending, in chronological order by oldest to newest case, for all cases over 12 months with an indication of the next scheduled event for the case;*

Commentary: Caseflow management information is not available to the pilot courts since the process is currently manual. Once the ICIS automated system is implemented and caseflow standards for case processing time and backlog management are established, the pilot court judges and case management planning committees will be in a position to better utilize the case management reports. As a result of the pending case survey completed in all pilot courts, backlog exception reports have been generated to provide a listing of all pending cases noting age, case type and date of last scheduled event. These reports and other standardized reports should be produced and reviewed by the pilot court case management committees on a monthly basis. Tracking progress on a regular basis will assist the court in planning strategies to adjust to increases in filing levels and identify methods to reduce cases pending over time standards (i.e. backlog).

Operating Standard # 7: Improvements in Trial Calendaring and Trial Date Certainty

Pilot Court Calendar management and trial assignment system should be refined to use case track, assessment of trial predictability and estimated trial time in the setting of the trial calendar.

The current calendaring system used in the Basic Courts can be improved by using more information concerning the case type, estimated settlement and postponement rates and estimated trial time in building the trial calendar. Generally, the civil courts rely on individual judges to establish a trial setting procedure. Trial calendaring procedures are not standardized and left solely to the assigned judge's discretion. This method can be inefficient and have the effect of over scheduling or under scheduling an appropriate number of cases for trial because no predictability of trial time is used.

One case management tactic would be to consider scheduling expedited cases on specialized master calendar and to use an estimation of the percentage of settlements and postponements to allow the court to schedule a higher volume of these case types per day.

Operating Standard #8: Uniform Trial Postponement Policy and Improved Court Control of Continuances

The Macedonia Basic Courts should establish a written uniform Trial Postponement policy that sets time limits for requesting a trial postponement and strict criteria for what constitutes a "good cause" trial postponement.

Commentary: *The number and percentage of trial postponements in the Macedonia pilot courts is very high, due in part to the lack of a uniformly enforced adjournment policy. There is a need for a clearly written and monitored trial postponement policy in order to begin to address trial predictability. The policy should address the following factors:*

- *Ensure adequate advance notice of the trial date, generally six (6) weeks;*
- *Allow counsel to revise the date of the trial to another date in the trial week if they notify the court within 15 days of the date of the trial notice;*
- *Restrict the number of good cause postponements in each case to one, after which moderate sanctions might be imposed at the judge's discretion;*
- *Establish restrictive criteria for good cause trial postponements, which should be strictly limited to significant illness or other unforeseen critical circumstances;*
- *Require cases postponed for trial to appear as date certain trials for the following trial week;*

- *Enforce the adjournment policy by requiring President Judge approval of any adjournments that do not meet the adjournment criteria.*

Operating Standard #9: Improve Trial Date Certainty of complex and standard cases through use of improved Pretrial Conference and Trial Management Order procedures.

Pretrial Management Conferences should be held in all complex cases and in the more complicated standard cases, at the trial judges discretion, as a means of ensuring that all necessary pretrial and all trial management issues have been resolved prior to the actual trial date.

Commentary: *Cases set for trial should have a reasonable amount of assurance that they will begin on the trial date in order to have any credibility to the Bar and litigants. Setting a pretrial conference at a date 30 days from trial in more complex cases allows counsel and the court one final opportunity to resolve any pretrial obstacles, make a final attempt at settlement and to plan for trial management issues prior to the actual trial date.*

The judge and counsel would meet for a conference, either in person or by telephone conference, if available, at which time counsel would be required to provide:

- *A concise statement of the nature of the action.*
- *A list of witnesses to appear at trial.*

- *The factual and legal contentions of the parties.*
- *The admissions or stipulations of the parties.*
- *A specification of the issues to be determined at the trial including all special evidence problems to be determined at the trial.*
- *The disposition of issues, including evidence issues, as to which there is no reasonably arguable position.*
- *A list of exhibits to be marked into evidence.*
- *Any unusual factors requiring special attention.*
- *The order of opening and closing in multiparty actions.*
- *The name of trial counsel who is to try the case for each party. No substitution in the designated trial counsel shall be made without leave of court if such change will interfere with the date of trial examination.*

All stipulations reached at the Pretrial Management Conference should be recorded in writing into a Pretrial Conference Management Order as submitted and agreed to by counsel and approved by the trial judge.

Operating Standard # 10: Management Structure- Roles and Responsibilities of the President Judge, Court Secretary and Intake Coordinator in the casflow management process; Court Management Committees and development of Delay Reduction Plans

A clear statement of roles and responsibilities of the President Judge and Court Secretary should be discussed and developed by the pilot courts. A standing Court Management committee should be set up to develop court improvement and backlog reduction plans in each Basic Court.

Commentary: *It is important to develop clear identifications of roles and responsibilities of the President Judge and Court Secretary in the direction of the case management process. The following definition of roles is recommended as a guide, but should be discussed and developed by the President Judge and Committee:*

Internal Management Structure-

Role of the President Judge of the Pilot Court in Caseflow Management

The Macedonia Basic Courts are headed by a President Judge, who in addition to serving as a trial judge is responsible for the fair and efficient processing of all civil case of thee court. The leadership of the President Judge involves developing and communicating a vision and goals for the court congruent with Ministry of Justice and Supreme Court policies and the law. In this leadership role the President Judge may assume the following responsibilities:

- *Coordinates the judicial and administrative activities of the court;*
- *Sets local caseflow management goals consistent with law;*
- *Fosters collegiality and collaborative planning processes involving the judges, support staff and the Bar Association;*
- *Ensures that MOJ, Supreme Court and pilot court judicial policies are carried out fully;*
- *Approves all local policy and procedure for management of civil cases, approves case track assignment and case scheduling plans consistent with law;*

Role of the Court Secretary and Court Coordinator in Caseflow Management

The role of the Court Secretary, Court Coordinator and Civil Registry Office is to oversee the timely and efficient processing of all civil cases from the time of case registration through final disposition and recording of the judgment. To perform this role effectively, the Court Secretary and Registry staff must exercise early and proactive case management, which in turn requires tracking and monitoring of cases as well as supervision of all staff performing case management functions.

For purposes of caseflow management, the Court Secretary, Court Coordinator or staff under his supervision should perform the following tasks:

- Case registration and assessment of the case based upon case type, degree of complexity, need for speedy disposition and special needs for judicial management;*
- Monitoring the timely progress of cases with regular reports and improvement recommendations to the Chief Judge;*
- Scheduling necessary and meaningful court events ensuring that no postponements are given without another date being set;*
- Sets calendars and notices cases for trial examination and other events according to judge requests, case needs and overall calendar goals;*
- Prompt processing of data entry of all case documents, actions, dispositions, dismissals and judgments*
- Data collection and preparation of automated calendar performance and statistical reports;*

Court Management Committees

A Court Management Committee, comprised of President Judge, Presiding Civil Judge, Court Secretary, Court Coordinator and other key stakeholders should meet regularly to review court performance in backlog and delay reduction and to evaluate court improvement plans in each pilot court.

Each pilot court should establish a Court Management Committee to review, plan and monitor progress in caseflow management improvements. The pilot court committees should consist of no more than eight to ten judges, managers and bar representatives and include:

- President Judge as chair*
- Civil Presiding Judge*
- Two Civil trial judges who demonstrate knowledge and interest in judicial leadership and caseflow management*
- Court Secretary and/or Court Coordinator*
- Attorney representative of the Bar Association*
- Intake Office Supervisor*
- At least one Civil Registry Office staff person that may be designated based upon knowledge and interest in civil case process;*

The Committee should set meet to establish goals, discuss new ideas to reduce backlog and delay and to set court improvement plans. Specific guidelines for development of Court Improvement Plans are contained in Section IV of this manual.

Section II : Model Guidelines for Differentiated Caseflow Management Procedures

A. Requirements for Pleadings

1. Case Information Statement. A Case Information Statement in a form prescribed by the MOJ shall accompany every filed pleading. The Case Information Statement, which shall be served with the pleading, shall not be admissible into evidence. The Case Information Statement (CIS) shall be used solely by the court for purposes of efficient scheduling and case management.

2. Notice of Other Actions. Each party shall include a certification as to whether the matter in controversy is the subject of any other action pending in any court. Further, each party shall disclose the names of any other party who should be joined in the action.

B. Assignment to DCM Tracks

1. Standards for Assignment. Every action filed in the Pilot Courts shall be assigned to the complex track, the standard track or the expedited track in accordance with the following criteria and giving due regard to attorney and litigants requests for track assignment:

- (a) Complex track. An action should be assigned for individual judge review and management if it appears likely that cause will require a large expenditure of court and litigant resources in its preparation for trial and the trial examination by reason of the number of parties involved, the number of claims and defenses, the

legal difficulty of the issues, the factual difficulty of the subject matter, or a combination of these factors.

(b) Standard Track. An action not qualifying for the complex or expedited track should be assigned to the standard track. All non-material damage claims, labor dispute cases and multiple party commercial cases shall be presumptively assigned to the standard track. In addition, presumptive standard track assignment should be considered for:

- Compensation for material damages where value exceeds 2,000 Euros and /or where multiple parties and cross-claims for damages are involved;*
- Commercial matters with value exceeding 10,000 Euros or where multiple parties and cross-claims are involved;*

(c) Expedited track. An action shall ordinarily be assigned to the expedited track if it appears that by its nature, it can be promptly examined with minimal pretrial proceedings. All actions in the following categories shall be assigned to the expedited track subject to reassignment as herein provided:

- Actions to modify, confirm or vacate an award or judgment;*
- Commercial matters consisting of money owed, open book account and collection of bills and notes excluding construction cases, in which liquidated (known and verifiable) damages are sought;*

- *Other summary, two-party non complex actions requiring minimal pretrial proceedings;*

2. Procedure for Case Assignment. *The President Judge, Court Secretary or his designee on the basis of his review of the Complaint and Case Information Statement of the plaintiff will assign presumptively “expedited” matters to the expedited track. In other cases, track assignment shall be made by the President Judge, Court Secretary or his designee as soon as practicable after receipt of the complaint. Following approval of the President Judge regarding track assignment, a single managing or settlement judge should be assigned.*

C. Assignment and Scheduling Notice

Forthwith upon the making of the track assignment the Court Secretary shall send written notice thereof to all parties who have filed a pleading in the action.

- 1. Expedited track. If the case has been assigned to the expedited track the notice shall set the date for trial examination within 45 days of complaint registration.*
- 2. Standard track. If the case has been assigned to the standard track the notice shall state the date upon which the “case management conference or initial hearing event” shall be heard, the date by which all expert reports and pretrial proceedings must be completed, and the anticipated month and*

year of trial. Initial management conference shall normally be held within 60 days of complaint, pretrial conference within 120 days and trial within 180 days of complaint in standard track cases.

3. Complex track. *If the case has been assigned to the complex track the notice shall state the judge assigned to manage the case and the date of the initial management conference.*

D. Requests by Counsel for Case Track Reassignment.

An action may be reassigned to a track other than the track specified in the Assignment and Scheduling Notice on application of a party or on the courts own motion. The application may be made informally to the President Judge or designee and shall state with specificity the reasons why the original track assignment is inappropriate.

E. Pretrial Proceedings-Time for Completion

Unless an order is entered enlarging the time herein prescribed for pre-examination proceedings, all proceedings shall be completed as follows:

1. Complex cases. *Actions assigned to the complex track shall be completed in accordance with the case management order entered in the cause, but shall not ordinarily exceed 180 days from date of the Assignment Notice to date of trial examination.*
2. Standard cases. *In actions assigned to the standard track, pretrial proceedings shall be completed within 120 days of the date of the Assignment and Scheduling Notice. The President Judge or his designee shall modify said period, if*

necessary for the accommodation of added or impleaded defendants.

3. Expedited cases. In actions assigned to the expedited track, no responsive pleadings shall be allowed and all pretrial proceedings shall be completed within 45 days of the date of issuance of the Assignment and Scheduling Notice.

F. Case Management Conferences; Case scheduling and Management orders

1. Complex cases; Initial Case Management Conference.

In actions assigned to the complex track, an initial case management conference, which may be conducted by telephone, shall be held within 30 days of the expiration of time for receipt of the last permissible responsive pleading or the date of the Assignment and Scheduling Notice, or as soon as practicable considering the number of parties added. Attorneys for the plaintiff and defense shall participate and the parties shall be available in person, or by telephone. At the initial case management conference the court shall enter a case management order, following discussions with and representations by counsel, fixing a schedule and description for pretrial proceedings and disposition of all pre-examination issues, narrowing the issues in dispute if possible, and setting a date for trial examination or a second management conference to be held as practicable.

2. Standard Track Cases. Initial Hearing Event - Case Management Conference; Case Scheduling Order.

In cases assigned to the standard track, attorneys actually responsible for the prosecution of the case and its defense shall make a good faith attempt, within 10 days of the issuance of the Assignment and Scheduling Notice to confer, either in person or by telephone, and to agree upon a Case Scheduling plan, in a form prescribed by the MOJ and Supreme Court. Each attorney shall sign and file a copy of the plan with the court within 20 days of the date of issuance of the Assignment and Scheduling Notice. In the absence of mutual agreement by the parties the court may set dates for a Case Management Conference or Initial Hearing event. Additional case management conferences may be set at the discretion of the court; if it appears that pretrial proceedings or other difficulties are delaying or may unduly delay trial examination.

In all cases assigned to the standard track, the Assignment and Scheduling Notice shall set the date for an Initial Hearing Event to be held within 60 days of the date of issuance of the Assignment and Scheduling Notice. The court shall make and issue a Case Management order at the initial hearing event which shall note the following:

- (a) Specific case scheduling plan including the date for resolution of all expert reports, pretrial proceedings and the date for trial in the case.*
- (b) The prospects for alternative settlement of the action as represented by the parties.*
- (c) Special pretrial proceedings and dates by which resolution will be reached.*
- (d) Designation of trial counsel who will try the case. No substitution of designated trial counsel will be allowed after this date without leave of court.*

(e) Referral to court-annexed mediation, if deemed appropriate.

3. Interim Case Management Conferences; Status and Settlement Conferences.

The assigned trial judge, in its discretion, shall schedule such additional case management conferences as may be necessary to assure prompt settlement or the expeditious preparation of the action for trial. A case management order shall be entered following each case management conference embodying the agreement of the parties and directives of the court.

G. Pretrial Management Conferences

1. Actions to be Pretried. A pretrial conference may be held in any complex case at the request of the parties or in any Standard or complex case at the courts discretion, where it is found to be in the best interests of the parties. The court shall make a pretrial management order in writing at the conclusion of the conference to be signed by the judge and the parties, such order to prepared by counsel and approved by the judge, which shall recite specifically:

- (a) A concise statement of the nature of the action.*
- (b) The factual and legal contentions of the parties.*
- (c) The admissions or stipulations of the parties.*
- (d) A specification of the issues to be determined at the trial including all special evidence problems to be determined at the trial.*
- (e) The disposition of issues, including evidence issues, as to which there is no reasonably arguable position.*
- (f) A list of exhibits to be marked into evidence.*
- (g) Any unusual factors requiring special attention.*
- (h) The order of opening and closing in multiparty actions.*
- (i) The name of trial counsel who is to try the case for each party. No substitution in the designated trial counsel shall be made without leave of court if such change will interfere with the date of trial examination.*
- (j) Final list of witnesses to be offered by parties at trial.*

H. Assignment for Trial Examination

- 1. Trial Notice.*** *In every action assigned to the complex or standard track, the court shall send each party a trial notice confirming the date for trial examination as contained in the case management order, or as modified by subsequent order or determination of the court, fixing a firm trial date generally no sooner than 6 weeks from the date of the notice.*
- 2. Trial Adjournments.*** *Within 15 days after receipt of the trial assignment notice, counsel may request assignment for another day within 10 days of the assigned trial date, and such requests should be routinely granted if all parties consent. An adjournment request made after the 15-day period may only be granted upon a statement of reasons for good cause or unforeseen circumstances. No case shall have a trial date adjourned without a new scheduled date assigned by the court.*

Section V. Guidelines for Development of a Caseflow Management Implementation Plan

The goals of the pilot court management committee are: (1) To act as a standing committee to review and coordinate caseflow management improvements in the pilot court, (2) To assist the President Judge in development of an Improvement Plan to implement the caseflow management operating standards and procedures, and (3) to provide continuous evaluation and monitoring of the success in achieving caseflow management goals in the pilot court.

The model plan format is presented in Section V of this manual. The following elements should be contained in the Implementation Plan developed by each pilot court:

A. Composition and role of the Case Management Committee

Each pilot court should establish a representative Case Management Committee with a composition consistent with the operating standards within 30 days. The committee's first task will be to outline the goals, timetable, activities and responsibilities of the committee in developing the Implementation plan.

B. Review of the existing pilot court workload and nature of the pending case backlog

The committee should review the existing workload and nature of the current pending cases in the pilot court as a starting point in projecting case processing goals and identifying the existing makeup of case pending and cases in backlog. The review should identify the case type breakdown of cases pending to allow an initial examination of the types and complexity of cases in active pending status as of a given point in time. This information will assist the court in identifying criteria for case track classification and for establishing presumptive case tracks for selected case tracks.

The pilot court should also use the current caseflow performance measures (2003) as a baseline to project filings levels in future years and subsequent workload requirements and goals.

C. Pilot Court Case Processing Goals

The pilot court committee should set case processing goals for the next three years as initial targets. Case processing goals should be based upon overall civil case processing time standards and take in to

consideration the existing and projected filing levels, backlog and resulting workload requirements.

D. Work plan of Activities and Procedures to Implement the Caseflow Management Operating Standards/Procedures

The work plan should detail the activities and procedures the pilot court will use to implement the caseflow management operating standards outlined in Section II. Plans can be flexible and phased in over time, however, the committee should specify the sequence and timing of the implementation.

E. Action Plan

The final segment of the Implementation plan is a summary containing key goals, activities to address operating standards, timelines and responsibilities for implementation. This plan will be a planning and ongoing monitoring tool for the committee. The plan targets, activities and timelines would be revised, based on changing conditions on a quarterly basis.